

1 Honorable Christopher M. Alston  
2 Chapter 11  
3 Hearing Date: January 26, 2018  
4 Hearing Time: 9:30 a.m.  
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8 UNITED STATES BANKRUPTCY COURT  
9 FOR THE WESTERN DISTRICT OF WASHINGTON

10 In re  
11 Northwest Territorial Mint LLC,  
12 Debtor.

Case No. 16-11767

**BOY SCOUTS OF AMERICA'S  
RESPONSE TO MOTION FOR ORDER  
AUTHORIZING THE AUCTION AND  
SALE OF THE DEBTOR'S EQUIPMENT,  
DIES, TOOLING, ARCHIVES, AND  
INVENTORY FREE AND CLEAR OF  
ALL LIENS, CLAIMS, INTERESTS, AND  
ENCUMBRANCES**

16 *Related to Docket No. 1350*

17 BOY SCOUTS OF AMERICA ("BSA"), a Congressionally-chartered corporation,  
18 responds to the Motion for Order Authorizing Auction and Sale (Dkt. 1350) to state its interests  
19 and reserve its rights:

20 1. Debtor's inventory likely includes coins, medallions and knives bearing  
21 trademarks, service marks, emblems, logos, and other distinctive marks owned and controlled by  
22 BSA ("BSA Marks").

23 2. Debtor's dies and tooling likely incorporate and use BSA Marks.

24 3. Debtor's use of the BSA Marks was pursuant to a *License and Royalty Agreement*  
25 that has expired by its own terms, and, in any event, cannot be assumed and assigned without the  
26 consent of BAS. *In re Catapult Entertainment*, 165 F.3d 747 (9th Cir. 1999) (because federal  
patent law excused non-debtor licensor from rendering performance, debtor could not assume or

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1 assign the non-exclusive patent license without the non-debtor's licensor's consent). The  
2 analysis in *In re Catapult* holds true for trademark licenses. *In re Trump Entm't Resorts, Inc.*,  
3 526 B.R. 116, 121 (Bankr. D. Del. 2015).

4        4. The License and Royalty Agreement provides for the payment of royalties by  
5 Debtor to BSA even after its expiration.

6       5.      Debtor and BSA are also parties to a *Letter of Agreement to Sell to the Boy Scouts*  
7 *of America* under which BSA delivered purchase orders to Debtor for Merchandise using the  
8 BSA Marks and for fixed prices.

9 WHEREFORE, BSA reserves its rights to the BSA Marks and related Royalties, its  
10 interest in Debtor's inventory, dies, tooling, merchandise, and any other assets using the BSA  
11 Marks, and to participate in any sale or auction of Debtor's assets.

DATED this 25<sup>th</sup> day of January, 2018.

FOX ROTHSCHILD LLP

By: /s/ Joseph E. Shickich, Jr.

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## CERTIFICATE OF SERVICE

Veronica I. Magda, declares:

1. I am an employee of Fox Rothschild LLP which represents Boy Scouts of America. I am a citizen of the United States, over the age of 18, and competent to make this Declaration.

2. On January 25, 2018, I electronically filed the forgoing document with the Clerk of the Court (using the CM/ECF System).

3. It is my understanding that the CM/ECF System will send notifications of this filing to all parties listed in this case to receive notice electronically.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

DATED this 25<sup>th</sup> day of January, 2018.

/s/ Veronica Magda  
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